

CHAPTER 5. TAXES

SECTION 1. STATE AND LOCAL TAXES

1. GENERAL. It has long been held that the doctrine of sovereign immunity and the Supremacy Clause of the Constitution combined to prohibit the States from taxing the Federal Government or its activities. However, both Federal activities and State taxing schemes have grown in complexity and sophistication, and today there are some limited exceptions to the rule that the Federal Government can pay no tax.
2. SALES TAX. The question as to whether the Federal Government pays a sales or other tax imposed on its purchase of goods or services within a State depends on where the legal incidence of the tax falls. If the tax is a tax on the seller and one which only the seller is obligated to pay, the Government may reimburse the seller for his total cost including tax. But if the buyer is in any way legally responsible for the payment of the tax, the Federal Government as a buyer cannot be held responsible for such payment. There have been numerous Comptroller General decisions in this area, such as 21 Comp. Gen. 733, 1119; 23 Comp. Gen. 957; 24 Comp. Gen. 150; and 46 Comp. Gen. 363. If a vendor requires evidence that a sale or transaction is tax exempt, he should be provided with a tax exemption certificate (SF 1094, U.S. Government Tax Exemption Certificate).
3. HOTEL AND MEAL TAX.
 - a. Employee as Buyer. When a Federal employee rents a room directly, the employee becomes personally liable for the amount of the rental, including tax. The Government is not a party to the transaction and the tax is not a tax on the Government. Accordingly, the employee cannot assert the Government's immunity from local taxes. The fact that the Government may reimburse the full rental price as part of the employee's travel expense does not transform the tax into a tax on the Government (55 Comp. Gen. 1278). If local law exempts Federal employees from the tax, the employee should use the state or local government tax exemption certificate to claim the exemption (B-172621, April 4, 1973, non-decision letter).
 - b. Government as Buyer. When the Government rents rooms directly, that is, if there is a direct contractual relationship between the United States and the hotel or motel for the rental of rooms to Federal employees or others, the Government is entitled to assert its immunity from local taxes (55 Comp. Gen. 1278).

4. TAX EXEMPTION CERTIFICATES (SF 1094)

- a. General. 7 GAO 26 states that the General Services Administration shall be responsible for prescribing the United States tax exemption certificate form and procedures for its use (see 41 CFR 1-11.502-1).
- b. Restrictions on Use. United States tax exemption certificates shall not be used for:
 - (1) Purchases subject only to Federal taxes.
 - (2) Purchases on which the taxes are \$10 or less.
 - (3) Purchases for the operation or maintenance of personally owned motor vehicles for which mileage has been authorized.
 - (4) Purchases for subsistence, if per diem has been authorized.
 - (5) Purchases, by employees in official travel status, which were for official use but which were not paid for at time of purchase.

5. PROCEDURES FOR HANDLING STATE OR LOCAL TAXES. Upon receipt of vendor's billings:

- a. Determine whether or not the vendor's billing includes State or local taxes.
- b. Determine whether the State or local tax falls on the vendor or the buyer. If it is not apparent from the document or other sources of information where the tax falls, consult the appropriate legal counsel or taxing authority for an opinion.
- c. Tax exemption certificates shall not be used when taxes are under \$10.00. If the amount of the tax is over \$10.00 and the tax falls on the buyer, deduct the amount of tax and prepare SF 1094, U.S. Government Tax Exemption Certificate. Attach SF 1094 to a copy of the invoice and mail directly to the vendor.
- d. Prepare SF 1094 where the vendor's price includes State and local taxes which fall on the buyer, and the vendor has refused to sell at a price exclusive of the taxes. Show vendor and purchaser identification. After scheduling, annotate copies of the invoice "Refund to be Claimed," attach the SF 1094 and transmit to the appropriate accounting unit for billing the taxing authority for refund of the taxes paid.

SECTION 2. FEDERAL TAXES

1. FEDERAL EXCISE TAXES. Generally, the Department is required to pay Federal excise taxes. In most instances these taxes are not stated separately, but are included in the price of the item. Federal taxes that are of a recurring nature and applicable primarily to one operating administration should be provided for in the administration's accounting procedures and in their supplement to this manual. An example would be the aircraft fuel tax and aircraft use tax applicable to FAA aircraft as discussed below.
2. AIRCRAFT FUEL TAX.
 - a. General. Section 4041(c) of the Internal Revenue Code, as amended by PL 97-248, imposes a tax of 14 cents per gallon on gasoline and jet fuel used in noncommercial civil aircraft. DOT is required to pay tax on all aviation fuel used in DOT civil aircraft. This tax is normally included in the supplier's billing and paid as part of the purchase price of the fuel. The exception is aviation fuel purchased for delivery to DOT fuel storage tanks for subsequent issue to both taxable and non-taxable users. The Internal Revenue Service (IRS) regulations covering these tax-free sales and purchases can be found at 26 CFR 154.1-1.
 - b. Tax-free Purchases. In order to purchase the fuel tax-free, the accounting office must file in duplicate Form 637A, Certificate of Registry, with the appropriate District Director of Internal Revenue. A validated Form 637A constitutes acceptance by IRS that you are registered for the purposes of selling or purchasing fuel tax-free.
 - c. Taxable Issue and Sale of Fuel Purchased Tax-Free. A complete record of all fuel issued for use in DOT civil aircraft will be maintained as well as fuel sold to a purchaser subject to the tax. When fuel is sold to a purchaser subject to the tax, the billing will include the 14 cents per gallon tax. Billings for sale of fuel to the military will not include the tax since they are exempt from payment.
 - d. Payment of Tax for Taxable Issue and Sales. Payment of the tax will be made quarterly by the accounting office to IRS on Form 720, Quarterly Federal Excise Tax Return. The basis for determining the amount of the tax will be the number of gallons of fuel issued to DOT aircraft plus the number of gallons sold to purchasers subject to the tax, multiplied by 14 cents per gallon.

e. Voucher Examiner. Determine that:

- (1) The number of gallons used in computing the tax is based on accounting records maintained for the purpose of disclosing fuel tax liability; and
- (2) The computation for the amount of the tax paid is based on 14 cents per gallon times the number of gallon reported.

3. AIRCRAFT USE TAX. The Airport and Airway Revenue Act of 1970 (Section 4491 of the Internal Revenue Code) imposed a tax on the use of civil aircraft, including those owned and registered by DOT. This tax was repealed effective August 31, 1982 by PL 97-248, Title II, Section 280(c)(1), 96 Stat. 564.